ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band	)	ET Docket No. 98-237

COMMENTS OF NEW SKIES SATELLITES N.V.

New Skies Satellites N.V. ("New Skies") hereby comments on the Commission's proposal to allocate the 3650-3700 MHz band to the non-Government fixed service on a primary basis and to restrict or eliminate the international Fixed Satellite Service ("FSS") usage of this band.[1] As part of the *Notice*, the Commission also imposed an immediate freeze on any new applications or substantial modifications of Earth station licenses proposing to operate in this band.[2] New Skies' satellites incorporate the extended C-band frequencies, and New Skies currently provides service to customers operating in the United States in this band. Thus, New Skies objects to the Commission's proposal because it would foreclose the ability of satellite operators to make effective use of this band, strand investments made in on-orbit satellites incorporating this band, and would disrupt service to existing customers.

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1 *Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band*, FCC 98-337, released December 18, 1998, 64 Fed Reg 2462 (January 14, 1999) (hereafter "*Notice*").

2 *Id.* at ¶ 2.

Contrary to the Commission's assertion, INTELSAT and Inmarsat are not the sole organizations using the 3600-3700 MHz band.[3] The U.S. allocation restricts FSS usage in the extended C-band to "international inter-continental systems and subject to case-by-case electromagnetic compatibility analysis."[4] New Skies, a commercial FSS operator, uses the 3600-3700 MHz band globally on its operational, international, inter-continental systems. As the following table indicates, two of New Skies' GSO/FSS satellites serving the United States, NSS-806 at 40.5° W.L. and NSS-803 at 21.5° W.L., currently provide international services to and from the United States, including in the extended C-band spectrum (3600-3700 MHz for downlinks), as permitted under the Commission's Rules and international allocations.[5]

Table 1

USA Downlink Transponders in Affected Band	
NSS-803 (21.5° W.L.)	NSS-806 (40.5° W.L.)
3629-3701 MHz (right hand circular polarization)	3627-3699 MHz (left hand circular polarization) 3627-3699 MHz (right hand circular polarization)

New Skies' in-orbit satellites incorporate 72 MHz transponders that provide both North-South connectivity between the United States and South America, and East-West connectivity between the United States and Europe. The transponders cannot be reconfigured to use different frequencies. Thus, New Skies will be severely harmed if the Commission implements its proposal to restrict or eliminate FSS access to the 3650-3700

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3 *See Id.* at ¶ 3 at fn. 12.

4 47 C.F.R. § 2.06 fn. US 245. The band is shared on a co-primary basis with Government Aeronautical Radionavigation and Radiolocation operations, hence the need for site-by-site coordination.

MHz band, because NSS will lose access to on-orbit capacity that cannot be "made up" in other bands.

New Skies currently has customers using portions of its extended C-band capacity, and has been actively marketing the remaining capability to potential customers. The connectivity provided by this capacity provides important links in the Global Information Infrastructure; existing NSS customers use the extended C-band capacity to provide Internet connections between the United States and international points. It would disserve the public interest to freeze these intercontinental links, as the *Notice* effectively does. It would also disserve the public interest to preclude New Skies and other affected satellite operators from making similar capacity available to new customers.

The *Notice* imposes an immediate freeze on new applications or major modifications of Earth stations operating in the 3650-3700 MHz band, and even questions whether the Commission will continue to "grandfather" the existing earth stations.[6] Even if the Commission grandfathers the current stations, the FSS allocation will be rendered of marginal utility, at best. The inability of a customer to expand or relocate its stations makes the capacity nearly useless, and voids the flexibility that is the hallmark of satellite service. Satellite service, unlike undersea cable capacity, is ideally suited for point-to-multipoint service, and thus a valuable component of an international network.

The *Notice* imposed the freeze without warning, and without making any provision for alternative capacity. Although the proposed reallocation does not affect all

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5 *Id.* at ¶ 3.

6 *Id.* at ¶ 14.

of the extended C-band, it would severely constrain the remaining portion of New Skies' transponders because the transponders are configured to operate across the affected band. Even if the Commission identified alternative spectrum, New Skies' on-orbit satellites would be unable to utilize it. Replacing the capacity with new satellites would require NSS to spend hundreds of millions of dollars and would take years. It is particularly damaging to New Skies to encumber the extended C-band spectrum, as the two affected New Skies satellites are almost brand new. NSS-803 was launched in September 1997 and NSS-806 was launched in February 1998.

The freeze deprives New Skies of the ability to make full use of its satellite resources, without any ability to make up for that capacity loss elsewhere. The immediate freeze must be contrasted with the Commission's very recent action in the 18 GHz band, where on reconsideration the Commission lifted the freeze it had initially imposed for the Private Cable Operator service that did not have alternatives.[7] In that case, the Commission decided that the absence of alternative spectrum would undermine current investments and interfere with other important policies, such as competition:

> First, as demonstrated by ICTA, there simply is no other spectrum available at this time in the 18 GHz band, or in any other band -- even on an interim basis -- to adequately accommodate either new PCO operations or existing PCO operations seeking to expand during the pendency of this proceeding. Without access to spectrum, PCO's may no longer be able to meet consumer needs for new services. Moreover, this result would clearly be inconsistent with our expressed goal of increased competition in the provision of new video services. In addition, a lack of new spectrum for PCO's could undermine the existing investment that was made by PCO's in these bands.[8]

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7 *Redesignation Of The 17.7-19.7 GHz Frequency Band, Blanket Licensing Of Satellite Earth Stations In The 17.7-20.2 GHz Frequency Bands, And The Allocation Of Additional Spectrum In The 17.3-17.8 GHz And 24.75 25.25 GHz Frequency Bands For Broadcast Satellite Service Use*, Docket No. IB 98-172, FCC No. 99-18, released February 10, 1999.

8 *Id.* at ¶ 11.

Thus, the Commission properly continued to confer co-primary status for that service during the pendency of the rulemaking.

In this case too, New Skies is faced with no alternative capacity and the very real threat of stranded investment in satellite resources that cannot be re-deployed in other bands. In addition, by reducing the availability of inter-continental, international FSS, the Commission would be acting contrary to important policies by handicapping a significant component of the Global Information Infrastructure. Thus, the Commission should not adopt the *Notice*'s proposal to severely restrict or eliminate international satellite systems' access to the extended C-band but rather should continue to confer co-primary status for FSS until the rulemaking has been completed and permit new earth stations to continue to be licensed in the 3650-3700 MHz band.

In contrast to this current and very concrete usage of the spectrum for international FSS, the *Notice* fails to identify any particular need for the spectrum by terrestrial services. Nor is the spectrum identified desired by proponents of Fixed Wireless Access (FWA). The *Notice* recognizes that FWA proponents apparently prefer the 3400-3600 MHz band.[9] The *Notice* does not identify any other fixed services for which alternative spectrum is not already available.[10] The *Notice* also acknowledges that the 3650-3700 MHz band is ill suited for mobile services.[11]

Finally, New Skies is disturbed by the effective clearing out of the international FSS licensees (that will likely occur even under the grandfathering proposal as discussed

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9 *Notice* ¶ 9. These bands are also used by international FSS systems. For example, the NSS-806 satellite operates four 72 MHz transponders in this band in the United States.

10 For example, LMDS spectrum in the 28 GHz band, DEMS spectrum in the 24 GHz band and wideband capacity in the 38 GHz band could all be used to provide the wireless access services that the Notice suggests as possible uses of the band.

11 *Notice* ¶ 17.

above), because the Commission is not making available alternative spectrum for FSS, nor is the Commission requiring the new entrants to compensate the earth station licensees and satellite operators for their costs of obtaining substitute capacity. Such a disregard for the incumbent users stands in sharp contrast with other recent Commission decisions to clear a band for new services, where compensation and alternative spectrum were addressed.[12] To the extent that Earth station licensees may need to modify their Earth stations and/or re-point their antennas to other satellites, they will have to bear all of those costs themselves. Satellite operators may not have alternative capacity available and could lose customers.

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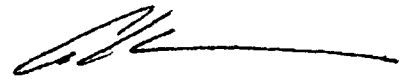
12 *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18, 12 FCC Rcd 7388 (1997), *affirmed on recon., FCC 98-309, released* November 27, 1998; *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (Emerging Technologies)*, ET Docket No. 92-9, 7 FCC Rcd 6886, 6890 (1992).

In sum, because the *Notice*'s proposals would effectively render the 3650-3700 MHz band unavailable for international, intercontinental FSS and would harm existing users, New Skies strongly opposes the *Notice*. The band is currently being used to provide valuable services to the public, and New Skies' satellites cannot be re-configured to make up for this lost capacity elsewhere. Additionally, prospective terrestrial users of this band have presented no compelling evidence that they need access to the affected frequencies. In contrast, C-band frequencies are in high demand by satellite operators and their users. New Skies thus urges the Commission to lift the freeze and continue to allow international, intercontinental FSS on a co-primary basis in the 3650-3700 MHz portion of the extended C-band.

Respectfully submitted,
NEW SKIES SATELLITES N.V.

By: 

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